

**MINUTES
of the
THIRD MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**November 9, 2012
State Capitol, Room 321
Santa Fe**

The third and final meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee was called to order by Senator Nancy Rodriguez, vice chair, on November 9, 2012 at 10:10 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Nancy Rodriguez, Vice Chair
Sen. Rod Adair

Absent

Rep. Antonio Lujan, Chair
Rep. Nora Espinoza
Sen. Mary Kay Papen
Rep. Danice Picraux

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS
Rebecca Griego, Records Officer, LCS
Theresa Rogers, Intern, LCS

Guest Legislators

Rep. James Roger Madalena
Sen. Gerald Ortiz y Pino

Guests

Additional guests are included on the guest list in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, November 9

Concerns Regarding the State Medical Cannabis Program

Steven Jenison, M.D., chair of the Medical Advisory Board to the New Mexico Medical Cannabis Program, was unable to attend the meeting, so his presentation was canceled.

Medical Cannabis Fund and Programming Status Update

Ken Groggel, manager, Department of Health (DOH) Medical Cannabis Program, and Chris Woodward, assistant general counsel, DOH, gave an update on the Medical Cannabis Program. Since its inception in July 2007, the program has grown to include more than 8,000 active patients, with more than 3,000 of those patients holding personal production licenses. Monthly enrollment increased substantially in the past three years — after holding steady at fewer than 20 new patients per month for the first two years of the program, enrollment now averages nearly 350 new patients per month. Patients enrolled in the program live in all of the state's counties and are being treated for nearly 20 different conditions, the most common being posttraumatic stress disorder, chronic pain and cancer.

On questioning, the presenters and subcommittee members addressed the following topics and concerns.

Cannabis producers. Aside from patients who have obtained personal production licenses that allow them each to grow four mature plants and up to 12 seedlings, there are 23 licensed nonprofit producers in the state, each authorized to cultivate up to 150 mature plants. Former Secretary of Health Catherine Torres denied all pending producer applications in 2012 based on a DOH assessment that demand for cannabis within the program was being met by the current producers. Some of the applicants who were denied have filed suit against the DOH. There have been no audits to date of personal production licensees.

Eligibility. Eligibility for the program is determined through diagnosis by a licensed medical professional; diagnoses by alternative medical personnel are not valid. A qualifying patient receives a medical cannabis identification card that must be renewed annually by the patient's physician.

- ★ Mr. Groggel will check to see if cultural or ethnic data exist regarding enrollees in the Medical Cannabis Program.

Public Comment

David Schmidt of the Drug Policy Alliance informed the subcommittee that the alliance meets monthly to discuss concerns about the Medical Cannabis Program and report those concerns to the DOH. He stated that the adequacy of the cannabis supply is questionable given the number of new patients entering the program monthly, and he suggested that the most effective way to increase supply immediately would be to increase the number of plants each producer is allowed to grow.

Sheila Johnson, whose developmentally disabled daughter was recently scheduled for a Supports Intensity Scale (SIS) reassessment, reported to the subcommittee that she was told not to bring any of her daughter's support providers, including medical personnel.

Cecilia Garcia, a developmental disabilities (DD) services provider, noted that the DOH is proceeding with its new SIS-determined supports structure without giving families and DD services providers any budget information that would allow them to plan for services. She also noted that the SIS is being administered by nonprofessionals and that she has seen job postings on craigslist.org for people with no DD training to work as SIS administrators.

Jessica Gelay, policy coordinator for the Drug Policy Alliance, described for the subcommittee some of the complexities involved in ensuring an adequate supply of medical cannabis, noting that a chronic pain patient who uses medical cannabis to make a topical salve needs more cannabis than is allowed under the personal production license.

Governor's Commission on Disability (GCD) Legislative Update and Technology Assistance Program

Jim Parker, director of the GCD, and Mr. Hely reviewed legislation proposed by the GCD for the 2013 legislative session and the status of the Technology Assistance Program, which moved from the DOH to the GCD in October.

Legislation proposed by the GCD includes:

- (1) a bill amending the Assistance Animal Act to rename it the "Service Animal Act" and conform its language to federal law;
- (2) a bill to provide for administrative and replacement fees for certain disability motor vehicle placards, with a portion of the fees appropriated to the Disability Fund for purchasing assistive technology; and
- (3) a joint memorial declaring October as "Disability History and Awareness Month".

Mr. Parker also presented recommendations from the task force convened pursuant to House Memorial 111 (2009) regarding disabled parking and from the State Use Act Task Force regarding state contracts with people with disabilities and membership on the State Purchasing Council.

On questioning, the presenters and subcommittee members addressed the following topics and concerns.

Service animal certification. Service animals are trained, but no certification is required.

Disability placard fees. Placard fees directed to the Disability Fund might be construed as a "tax by another name", and the bill could be challenged on that point unless the title is amended to reflect the tax aspect. A similar fee in Florida was challenged because the collected fees went into the state's general fund. In New Mexico, the collected fees would go into the Disability Fund and benefit people with disabilities rather than serve as a general state revenue stream.

- ★ Senator Rodriguez and Representative Madalena will sponsor the joint memorial designating October as Disability History and Awareness Month.
- ★ Senator Rodriguez and Representative Madalena will sponsor the Service Animal Act bill, and Jim Parker will provide talking points.

State Use Act

Nancy Bearce, executive director, Horizons of New Mexico, Mike Kivitz, president and chief executive officer (CEO), Adelante Development Center, and Ron Edwards, owner of Focus Advertising Specialties, gave an update on the State Use Act. Enacted in 2005, the State Use Act gives preferences in state contracting to people with disabilities and requires that 75 percent of the labor within any given contract be performed by people with disabilities. As the designated central nonprofit agency under the act, Horizons of New Mexico (formerly New Mexico Abilities) promotes and secures employment for people with disabilities by helping them negotiate state contracts. It also acts as a financial intermediary between contractors and the state by paying contractors for their work within 14 days of invoicing, then waiting for reimbursement from the state for those payments. Horizons receives no operational funding from the state for its services; its revenue derives from a 5% administrative fee added to the contracts it manages. There are currently 110 contractor members under Horizons providing employment for 351 people with disabilities, with 90 current contracts totaling nearly \$7.5 million.

On questioning, the presenters clarified that the contracts issued through the State Use Act are for services (such as paper shredding and document scanning) and that the Department of Finance and Administration has interpreted the act to mean that Horizons and its members have the right of first refusal on all state services contracts.

On invitation of the chair, Jim Jackson, executive director of Disability Rights New Mexico, noted that the vast majority of the dollar value for state contracts under the State Use Act go to a few large nonprofits that employ people with disabilities, and he recommended that the contracts be spread around more to include individual contractors. He also related the recent exposé of a Carlsbad-based nonprofit whose CEO was earning \$1 million in salary while the people with disabilities who worked for him were earning minimum wage.

Microboards and Employment Initiatives for Individuals Living with Disabilities

Nannie and Rosemarie Sanchez, disabilities advocates, gave a presentation on establishing microboards for individuals with disabilities and on employment initiatives. Following a year of meetings with the New Mexico Waiver Provider's Association (NMWPA), the Bernalillo County Commission agreed to appropriate \$100,000 for five positions within county government for individuals with disabilities; the provider association is following up with a training program for both the new employees and their employers. Such employment opportunities help individuals with disabilities become active and self-sufficient members of the community at large. To ensure transparency in the allocation of funds for disabilities services, the NMWPA suggests that the legislature create a disability oversight subcommittee of the

Disabilities Concerns Subcommittee, with both legislator and non-legislator members, to oversee services provided to individuals with disabilities.

Parents who are concerned that disability services for their children continue uninterrupted after the parents die can establish a "microboard" — a three- to five-person group that serves as an alternative to guardianship. While microboards are becoming more common in the U.S. and other states recognize microboards in statute, New Mexico does not. Nannie Sanchez is the only individual with a disability in New Mexico who has a microboard.

Employment for Blind Individuals and Individuals Living with Disabilities

Ralph Vigil, acting director of the Vocational Rehabilitation Division (DVR) of the Public Education Department, and Greg Trapp, executive director of the Commission for the Blind, gave a presentation on employment opportunities for individuals with disabilities, including the blind. The DVR has three employment programs for individuals with disabilities: the centers for independent living; the Disabilities Determination Services Program; and vocational rehabilitation. The Disabilities Determination Services Program is funded entirely with federal money and, as such, is vulnerable to cuts if the federal government goes off the so-called "fiscal cliff". The Vocational Rehabilitation Program is now having to prioritize by disability severity rather than by time on the waiting list, in part because of a funding shortage. The program has a 23% staff vacancy rate that might be reduced to 10% by the end of 2012. A cost-benefit analysis of employment programs for individuals with disabilities shows that \$1.00 of state spending results in \$3.00 of savings, as these individuals become less dependent on social services.

Programs within the Commission for the Blind have helped 450 people find employment, a success rate that places New Mexico tenth among all states for the ratio of blind people who are employed. The commission has an independent living program and offers training for individuals as they transition into employment. The Technology for Children Program, which is jointly administered by the commission and the DOH, provides assistive technology for blind children. The Randolph-Sheppard Act Program — a contract under the State Use Act — employs blind individuals as food vendors in state and federal properties, including Kirtland Air Force Base. Despite the success of these and other programs, the unemployment rate for individuals who are blind or have other disabilities is very high — 15% in 2011 — in part because of relatively low participation.

- ★ Mr. Vigil will follow up with an audience member who has a disability and has had difficulty getting a response from the DVR regarding a computer she needs for employment. Mr. Kivitz will meet with her regarding the Back in Use Computer Recycling Program through the GCD.

Guardianships and Conservatorships

Marsha Shasteen, an attorney with the Senior Citizens' Law Office, Leonie Rosenstiel, Ph.D., M.P.H., guardianship advocate, and Fern J. Goodman, general counsel at the

Administrative Office of the Courts (AOC), gave a presentation on issues relating to guardianships and conservatorships. While guardianships were originally conceived as a way to protect the elderly and individuals with disabilities from abuse and exploitation, some guardianship arrangements themselves become abusive and exploitative. Efforts to expose such problems are hampered by statutory provisions that impose secrecy on guardianship proceedings and courts that either limit the parties who are able to participate or give greater weight to a guardian's testimony than to others speaking on behalf of a protected person. The presenters recommended various changes to New Mexico statute to provide better protection for those under guardianship and pointed to Massachusetts and Florida as two states that have already amended their statutes in this way.

House Memorial 61 (2012) requested that the AOC conduct criminal background and credit checks on and annually track guardians and conservators. The AOC has one part-time employee dedicated to these tasks and, as of December, will have all courts statewide using an automated reporting system that facilitates tracking of guardians and conservators. A pilot study auditing guardianship cases in the Second Judicial District revealed many alarming situations and the need for a comprehensive monitoring system.

On questioning, the presenters and subcommittee members addressed the following topics and concerns.

Guardianship arrangements. The protected person retains all legal rights that are not assigned to the guardian. The guardian controls family access to the protected person, and a family must go to court to override a guardian's denial of access. Guardianships can be ordered by a court in a variety of circumstances, including cases of abuse or neglect by family members. Unlike a power of attorney, which can be revoked by the issuer, a guardianship arrangement can only be changed by court action.

Guardianship statutes. Under New Mexico statute, a guardian has the authority to treat the protected person as a minor child. Arizona statute requires reports from guardians; New Mexico statute does not. New Mexico requires monitoring of group homes but not of private guardianships. New Mexico does not require that guardians be bonded or certified, and the New Mexico Guardianship Association is working to change this.

On invitation of the chair, Mr. Jackson noted that Disability Rights New Mexico worked unsuccessfully to reform state statutes in 2009 to require reporting from guardians and to strengthen the role of guardians ad litem.

- ★ Frank Fajardo, director of the Guardianship Program at the Developmental Disabilities Planning Council (DDPC), will provide information on guardians of last resort through the DDPC.

Public Comment

Tim Carver, chief financial officer for the San Juan Center for Independence in Farmington, spoke of the problems caused by funding cuts since 2009 and urged the subcommittee to restore funding for independent living services to fiscal year 2009 levels.

Jenna Vizcaya, a behavioral support consultant, spoke about a culture of negligence caused by a weak protective services system in the state; conflict of interest among medical personnel who are used as expert witnesses in guardianship proceedings while under contract to guardianship agencies; diminished information in health records since enactment of the federal Health Information Portability and Accountability Act of 1996; and high staff turnover in group homes.

Stuart Stein, an attorney, presented seven recommended amendments to guardianship statutes pertaining to sequestration, reports, guardians ad litem and statutory priority of interested parties. A list of his recommendations appears in the meeting file.

Marsha Southwick expressed concern about the overly broad statutory control granted to guardians over a person and the person's estate.

Senator Rodriguez read written statements submitted by two members of the public who remained anonymous for fear of reprisal as they point out problems their families have had with guardianship arrangements. Copies of their statements appear in the meeting file.

Venus Masci spoke about problems she has had with her mother's conservator, whom she is taking to court. She noted that a conservator has full authority over a person's finances and that an irrevocable will can be changed by the settlor.

Doris Husted, public policy director for the Arc of New Mexico, informed the subcommittee that the court decides when a person needs both a guardian and a conservator and that some guardians do not charge for their guardianship services.

Ms. Shasteen noted that special needs trusts can be established for certain expenses.

RubyAnn Esquibel, principal analyst with the Legislative Finance Committee, reported that the Office of Guardianship of the DDPC has a \$4 million budget for court-ordered guardians of last resort.

Joe Bob Nunez pointed out that family members can only dispute or alter a guardianship arrangement if they have the money to go to court over the matter.

Having no further business, the subcommittee adjourned at 5:30 p.m.